

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

KEVIN M.,

Petitioner,

vs.

**EASTERN LOS ANGELES
REGIONAL CENTER,**

Respondent.

OAH No. L 2007050263

Early Intervention Services Act
(Gov. Code, § 95000 et seq.)

**DECISION GRANTING
PETITIONER'S APPEAL**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 30, 2007, in Alhambra.

Petitioner was represented by his mother, who was assisted by Spanish interpreter Leonor Padilla Maher (certification # 100768).¹ Lilia Ortega, Supervisor, Whittier II Unit, represented Respondent Eastern Los Angeles Regional Center (also referred to as the Regional Center or ELARC).

The parties presented the testimonial and documentary evidence described below and gave closing arguments. The record was left open until June 6, 2007, at the request of the parties, so that they could locate and submit documents that were not available at the time of the hearing. For that reason, Petitioner's mother waived the 30-day deadline for the issuance of this Decision, both on the record and in writing, and agreed to extend the deadline by nine days (the time remaining to the 30-day deadline as of the hearing date). On June 6, 2007, Petitioner submitted a report from the Blind Childrens Center dated June 2007, which was admitted as exhibit B. The record was thereafter closed and the matter was submitted for decision on that date. By operation of the waiver executed by Petitioner's mother, this Decision was due by June 15, 2007.

ISSUE

Shall the Regional Center provide funding for Petitioner to receive one hour per week of individual speech and language therapy?

¹ Petitioner's last name and the identity of his mother are omitted to protect their privacy.

EVIDENCE RELIED UPON

Documentary: Regional Center exhibits 1-11; Petitioner exhibits A-B.

Testimonial: Petitioner's mother; Carlos Martinez, family worker from the Blind Childrens Center.

FACTUAL FINDINGS

1. Petitioner is a 35-month-old boy, who is a Regional Center consumer, in the Early Start Program, due to High Risk status from his premature birth and related medical conditions.
2. By no later than March 2007, Petitioner's mother requested Respondent to fund the service at issue in this case.
3. By letter dated April 30, 2007, Respondent denied the request, stating that a Regional Center interdisciplinary team had reviewed Petitioner's case and determined that such a service was not warranted.
4. On May 9, 2007, a Due Process Hearing Request was timely submitted on Petitioner's behalf, which appealed Respondent's denial of funding and requested the hearing that ensued.
5. Respondent's speech therapy consultant, Brittany Berg, reviewed Petitioner's file relative to his service request. Ms. Berg noted that Petitioner presented global delays in all areas of development. She also noted that in a February 2007 report from Pediatric Care Services, Inc., Petitioner demonstrated cognitive abilities in the 7-10 month range and speech and language skills in the 9-12 month range. Ms. Berg concluded that Petitioner's cognition and language were commensurate. She also noted that a report from the HEAR Center (described in more detail below) indicated that during a speech therapy evaluation Petitioner did not comply with any of the tasks presented to him and did not use toys functionally. For those reasons, Ms. Berg concluded that Petitioner was not a candidate for individualized speech therapy.
6. The parties do not dispute that Petitioner is severely delayed in his communication skills. He knows only a few words and is not yet able to string words together. As a result, the parties have consistently included in Petitioner's Individualized Family Service Plan (IFSP), and updates thereto, goals and outcomes for Petitioner to improve his communication skills. Petitioner has consistently met the established communication goals and outcomes, including that of his most recent IFSP periodic review, dated February 6, 2007, thereby demonstrating consistent improvement in this area.

7. As a result of the initial service request, Respondent agreed to refer Petitioner to the HEAR Center for a speech and language evaluation. On March 27, 2007, such an evaluation was conducted by Angela Roden, a speech and language pathologist. Even though she noted in her report that Petitioner was not fully cooperative with the assessment, Ms. Roden still concluded that the prognosis for Petitioner's "speech and language skills to develop in an appropriate rate is considered fair." She therefore recommended that Petitioner attend individual speech and language therapy for one hour per week until he reached the age of 36 months. Because her report was issued in April 2007, and considering the fact that Petitioner will turn three in July 2007, it is assumed that Ms. Roden recommended that Petitioner receive at least three months of the speech and language therapy.

8. Since May 2006, Petitioner has been attending an infant program at the Blind Childrens Center (BCC). In a report recently issued, Petitioner's teacher at BCC, Lillian Ulloa, enthusiastically recommends that Petitioner receive speech and language therapy. Ms. Ulloa observes that Petitioner has made notable improvements in communication, is more independent during play and is more socially active with his peers. She notes that although Petitioner's scores indicate communicative functioning at a level of 12 months, his actual skills reflect a somewhat higher level. Ms. Ulloa notes that Petitioner's receptive skills are higher than his verbal skills. She also notes that Petitioner's expressive skills have improved over the last 6 months, and she estimates that he now uses approximately 20 words. Ms. Ulloa observes that, overall, Petitioner is "developing language, increasing vocabulary and more importantly, understanding that language meets his needs and wants." Based on the above, Ms. Ulloa believes Petitioner is a candidate for speech and language therapy due to his emerging communication skills. She also believes that his behavior will improve as his frustration over being unable to communicate decreases. Ms. Ulloa concludes that "[i]t is strongly recommended for Kevin to initiate speech and language services to support his incoming language."

LEGAL CONCLUSIONS

1. Jurisdiction for this case is governed by the federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1431 et seq.), and the California Early Intervention Services Act (CEISA) (Gov. Code, § 95000 et seq.), which supplements the IDEA. Each act is accompanied by pertinent regulations. Thus, both federal and state law applies to this case. Petitioner properly and timely presented, in conformity with these laws, a due process hearing request, and therefore jurisdiction for this case was established. (Factual Findings 1-4.)

2. When a person seeks to establish eligibility for government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; see also, 34 C.F.R. § 303.425(b).) In this case, Petitioner has the burden of proof. (Factual Findings 1-4.)

3A. Petitioner met his burden of establishing that he is entitled to funding to receive one hour per week of individual speech and language therapy. (Factual Findings 1-8.)

3B. Early intervention services are defined as those services “designed to meet the developmental needs of each eligible infant or toddler and the needs of the family related to the infant or toddler’s development.” (20 U.S.C. § 1432(4)(A); 34 C.F.R. § 303.12(a)(1).) Early intervention services related to a speech and language pathology are expressly provided for, including services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in the development of communication skills. (34 C.F.R. § 303.12(d)(4).)

3C. In this case, it is undisputed that Petitioner is severely delayed in his communication skills. The requested service is designed to meet Petitioner’s need to improve his development in communication. It was established that Petitioner will benefit from the requested service. For example, the speech and language pathologist to whom Respondent referred Petitioner for an evaluation concluded that he had a fair prognosis for improving his communicative skills and therefore recommended that Petitioner attend one hour per week of individual speech and language therapy. Petitioner’s infant program teacher also recommends that service. The opinion to the contrary of Respondent’s speech therapy consultant, Ms. Berg, was not persuasive in light of the evidence. Although Ms. Berg believes speech therapy is not indicated because Petitioner’s cognition and communication are commensurate, Ms. Roden of the HEAR Center and Ms. Ulloa of BCC obviously disagree. Ms. Berg also believes Petitioner’s poor performance during the speech therapy evaluation shows he is not a good candidate for the requested service. Yet Ms. Roden, who interacted with Petitioner during the evaluation, obviously believes he is able to comply with one hour per week of speech therapy, otherwise she would not have recommended the service. Petitioner’s teacher, Ms. Ulloa, is also apparently unconcerned about Petitioner’s behavior being a bar to his receiving the requested service. The opinions of Ms. Roden are given more weight than Ms. Berg’s, in light of her status as the speech pathologist to whom Respondent referred Petitioner for an evaluation, and her direct contact with Petitioner. The opinions of Ms. Ulloa are also persuasive in light of her regular and extensive contact with Petitioner as his infant program teacher.

3D. The ALJ is cognizant of the fact that Petitioner will turn three shortly. However, it is clear that Ms. Roden recommended three months of the speech and language therapy. Petitioner should therefore receive the requested service for three months. Since Petitioner was entitled to receive the service when it was requested three months ago, he should not be penalized simply because this hearing delayed provision of the service. Moreover, both the IDEA and CEISA contemplate the provision of necessary services during the transitional phase after a client turns three but before preschool services are provided by his local education agency. (34 C.F.R. § 303.148; Cal.Code Regs., tit. 17, § 52112.)

ORDER

The Eastern Los Angeles Regional Center shall forthwith provide funding for Petitioner to receive one hour per week of individual speech and language therapy for three months.

DATED: June 15, 2007

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings